

1 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

2 In the Matter of:

Investigation Case Number 04-0015-PHR

3 JOEL GIBSON)
4 Holder of Pharmacist License)
5 Number 12722)
6 In the State of Arizona,)
Respondent)

**CONSENT AGREEMENT AND ORDER
FOR SUSPENSION AND PROBATION**

7 **RECITALS**

8 In the interest of a prompt and judicious settlement of this case, consistent with the public
9 interest, statutory requirements and the responsibilities of the Arizona State Board of Pharmacy ("Board")
10 and under A.R.S. §§ 32-1901 *et. seq.* and 41-1092.07(F)(5) , JOEL GIBSON ("Respondent"), holder
11 of pharmacist license number 12722 to practice pharmacy in the State of Arizona, and the Board enter
12 into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as
13 a final disposition of this matter.

14 1. Respondent has read and understands this Consent Agreement and has had the
15 opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity
16 to discuss this Consent Agreement with an attorney.

17 2. Respondent understands that he has a right to a public administrative hearing concerning the
18 above-captioned matter, at which hearing he could present evidence and cross-examine witnesses. By
19 entering into this Consent Agreement, Respondent freely and voluntarily relinquishes all right to such
20 an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review
21 or any other administrative and/or judicial action, concerning the matters set forth herein. Respondent
22 affirmatively agrees that this Consent Agreement shall be irrevocable.

23 3. Respondent understands that this Consent Agreement or any part of the agreement may
24 be considered in any future disciplinary action against him.

25 4. Respondent understands this Consent Agreement deals with Board Investigation Case No. 04-
26 0015-PHR involving allegations of unprofessional conduct against Respondent. The investigation into

1 these allegations against Respondent shall be concluded upon the Board's adoption of this Consent
2 Agreement.

3 5. Respondent understands that this Consent Agreement does not constitute a dismissal
4 or resolution of any other matters currently pending before the Board, if any, and does not constitute any
5 waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any other pending
6 or future investigation, action or proceeding. Respondent also understands that acceptance of this
7 Consent Agreement does not preclude any other agency, subdivision, or officer of this State from
8 instituting other civil or criminal proceedings with respect to the conduct that is the subject of this
9 Consent Agreement.

10 6. All admissions made by Respondent in this Consent Agreement are made solely for the final
11 disposition of this matter, and any related administrative proceedings or civil litigation involving
12 the Board and Respondent. There fore, any admissions made by Respondent in this Consent Agreement
13 are not intended for any other use, such as in the context of another regulatory agency's proceedings, or
14 civil or criminal proceedings, whether in the state of Arizona or in any other state or federal court.

15 7. Respondent acknowledges and agrees that upon signing this Consent Agreement and
16 returning this document to the Board's Executive Director, Respondent may not revoke his acceptance
17 of the Consent Agreement or make any modifications to the document regardless of whether the
18 Consent Agreement has been signed by the Executive Director. Any modification to this original
19 document is ineffective and void unless mutually agreed by the parties in writing.

20 8. Respondent understands that the Consent Agreement shall not become effective unless
21 and until adopted by the Board and signed by its Executive Director.

22 9. If a court of competent jurisdiction rules that any part of this Consent Agreement is void
23 or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full force and effect.

24 10. Respondent understands and agrees that if the Board does not adopt this Consent Agreement,
25 he will not assert as a defense that the Board's consideration of this Consent Agreement constitutes bias,
26 prejudice, prejudgement or other similar defenses.

1 11. Respondent understands that this Consent Agreement is a public record that may be
2 publicly disseminated as a formal action of the Board and may be reported as required by law to
3 the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

4 12. Respondent understands that any violation of this Consent Agreement constitutes
5 unprofessional conduct under A.R.S. § 32-1927 (A) (17) (the licensee violated a formal order, terms of
6 probation, a consent agreement or a stipulation issued or entered into by the board or its Executive
7 Director pursuant to this chapter) and may result in disciplinary action under A.R.S. § 32-1927.

8 **REVIEWED AND ACCEPTED BY:**

9 
10 **JOEL GIBSON RPh**

8-4-04

DATE

11 
12 **Notary Public**



13 **FINDINGS OF FACT**

14 By stipulation of the parties, this Consent Agreement is entered into for final disposition of the
15 matters described herein. Respondent admits to the following Findings of Fact:

16 13. The Board is the duly constituted authority for the regulation and control of the practice of
17 pharmacy in the State of Arizona.

18 14. The Board possesses jurisdiction over the subject matter and over Respondent as a licensee
19 of the Board under A.R.S. § 32-1901, *et seq.*

20 15. Respondent is the holder of pharmacist license 12722 which permits Respondent to practice
21 pharmacy in the State of Arizona.

22 16. On February 5, 2004, Respondent was employed as the pharmacist-in-charge at Walgreens
23 pharmacy #5893, 705 E. McDowell Road, Phoenix, Arizona.

24 17. On February 5, 2004, Respondent incorrectly filled prescription number 0197105-05893 for
25 Lamisil 200 mg. tablets with Lamictal 200mg. at Walgreens Pharmacy #5893. Respondent was not on
26 duty when the prescription was dispensed to the patient by a non-pharmacist employee of Walgreens

1 pharmacy #5893. The pharmacist on duty failed to provide an oral consultation for this new prescription
2 as required by A.A.C. R4-23-402 (B). Respondent as the pharmacist-in-charge is responsible that every
3 patient be provided an oral consultation on new prescriptions unless a patient refuses the consultation.

4 CONCLUSIONS OF LAW

5 18. Under A.R.S. § 32-1901, et seq., the Board is the duly constituted authority for the regulation
6 and control of the practice of pharmacy in the state of Arizona,

7 19. The conduct and circumstances in paragraphs 15 & 16 constitutes a violation (s) of A.A.C. R4-
8 23-402 (A)(11) and A.A.C. R4-23-402(B) to wit:

9 **A.A.C. R4-23-402(A)(11)** Make a final accuracy check on the completed prescription medication
10 and manually initial the finished label. Manual initialing of a finished label is not required if the
11 pharmacy's computer system complies with the computer documentation requirements of R4-23-
408(B)(4);

12 **A.A.C. R4-23-402(B)** Only a pharmacist, graduate intern, or pharmacy intern shall provide oral
13 consultation about a prescription medication to a patient or patient's agent in an outpatient setting,
14 including a patient discharged from a hospital. The oral consultation is required whenever the
following occurs:

- 15 1. The prescription medication has not been previously dispensed to the patient;
- 16 2. A new prescription number is assigned to a previously dispensed prescription
medication;
- 17 3. The prescription medication has not been previously dispensed to the patient in the
same strength or dosage form or with the same directions;
- 18 4. The pharmacist, through the exercise of professional judgment, determines that oral
consultation is warranted; or
- 19 5. The patient or patient's agent requests oral consultation.

20 20. The conduct and circumstances described in the Findings of Fact above constitute grounds
21 for disciplinary action under A.R.S. § 32-1927 (A)(10) and A.R.S. § 32-1927 (B)(2) to wit:

22 **A.R.S. § 32-1927 (A)(10)** The license of any pharmacist or pharmacy intern may be revoked
23 or suspended or a pharmacist or pharmacy intern may be placed on probation by the board
when :

24 The licensee is found by the board to be guilty of violating any Arizona or federal law, rule, or
25 regulation relating to the manufacture and distribution of drugs, devices, or the practice of
pharmacy.

26 **A.R.S. § 32-1927 (B)(2)** The license of any pharmacist or pharmacy intern may be revoked
or suspended or the pharmacist or pharmacy intern may be placed on probation or censured

1 and a civil penalty of not more than one thousand dollars (\$1000.00) for each offense may
2 be imposed by the board when:

3 The licensee is found by the board, or is convicted in a federal or state court, of having
4 violated federal or state laws or administrative rules pertaining to marijuana, prescription-
5 only drugs, narcotics, dangerous drugs or controlled substances.

6 **ORDER**

7 Based upon the above Findings of Fact and Conclusions of Law and under the authority granted
8 to the Board by A.R.S. § 32-1928, 41-1092.07 (F)(5), and A.A.C. R4-23-104(G).

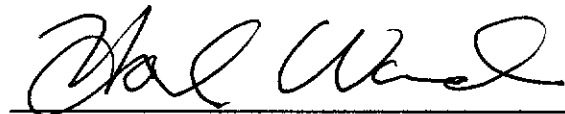
9 **IT IS HEREBY ORDERED** that:

10 21. License No. 12722, which was issued to Respondent for the practice of pharmacy in the State
11 of Arizona, is hereby **CENSURED** and a civil penalty of one thousand dollars (\$1,000.00) is imposed,
12 payable by certified check or cashier's check within sixty (60) days of the date of this Order.

13 22. Respondent shall successfully complete eight (8) contact hours, (0.8 C.E.U.) of American
14 Council on Pharmaceutical Education (ACPE) courses approved by the Board staff within sixty (60) days
15 of the date of this Order. The courses shall be limited to the topics of patient counseling by pharmacists
16 or medication error prevention.

17
18 DATED and EFFECTIVE this 11th day of August, 2004

19 **ARIZONA STATE BOARD OF PHARMACY**

20 

21 Hal Wand, RPh
22 Executive Director
23 Arizona State Board of Pharmacy
24
25
26

1 ORIGINAL of the foregoing, fully executed,
2 filed this 13th day of August, 2004, with:

3 Arizona State Board of Pharmacy
4 4425 W. Olive Avenue, #140
5 Glendale, Arizona 85302

6 Fully Executed Copy of the foregoing sent
7 via Certified US mail this 13th day of
8 August, 2004 to:

9 JOEL GIBSON RPh
700 N Coronado Street Apt #1079
Chandler, AZ 85224-7307

10 Copy or the foregoing mailed

this 13th day of August, 2004 to:

11 Roberto Pulver
12 Assistant Attorney General
13 1275 W. Washington, CIV/LES
14 Phoenix, Arizona 85007
15 Attorney for the State

16 By: Elaine C. Messer